

# EXHIBIT 61

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff,

Adv.Pro.No.

v.

08-01789 (SMB)

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

-----x

In Re:

BERNARD L. MADOFF,

Debtor.

-----x

IRVING H. PICARD, Trustee for  
the Substantively Consolidated  
SIPA Liquidation of Bernard L.  
Madoff Investment Securities LLC  
and Bernard L. Madoff,

Adv.Pro.Nos.

Listed on

Exhibit A

Attached Hereto

Plaintiff,

v.

DEFENDANTS IN ADVERSARY PROCEEDINGS  
LISTED ON EXHIBIT A ATTACHED HERETO,

Defendants.

-----x

Deposition of:  
THEODORE V. CACIOPPI  
May 15, 2019

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08-01789\_CATCAA0000001

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Deposition of THEODORE V. CACIOPPI,  
as reported by Nancy C. Bendish, Certified Court  
Reporter, RMR, CRR and Notary Public of the  
States of New York and New Jersey, at the U.S.  
ATTORNEY'S OFFICE, 86 Chambers Street, New York,  
New York, on Wednesday, May 15, 2019, commencing  
at 9:55 a.m.

A P P E A R A N C E S:

U.S. DEPARTMENT OF JUSTICE  
UNITED STATES ATTORNEY'S OFFICE  
Southern District of New York  
86 Chambers Street  
New York, New York 10007  
BY: ARASTU K. CHAUDHURY, ESQ.  
arastu.chaudhury@usdoj.gov  
For the Witness

ALSO PRESENT:

RICHARD M. WALSH, ESQ.  
Chief Division Counsel  
U.S. Department of Justice

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EXHIBIT A: ADVERSARY PROCEEDINGS			
	Adv.Pro. No.	Case Name	Counsel
1	10-04292	Robert Roman	Chaitman LLP
2	10-04302	Joan Roman	Chaitman LLP
3	10-04327	Gertrude E. Alpern Revocable Trust, et al.	Chaitman LLP
4	10-04332	Barry Weisfeld	Dentons US LLP
5	10-04341	Marden, et al.	Pryor Cashman LLP
6	10-04343	Patrice Auld, et al.	Pryor Cashman LLP
7	10-04348	Marden Family Limited Partnership, et al.	Pryor Cashman LLP
8	10-04352	RAR Entrepreneurial Fund LTD, et al.	Chaitman LLP Pro Se
9	10-04357	James Greiff	Dentons US LLP
10	10-04361	Harvey L. Werner Revocable Trust, et al.	Bernfeld DeMatteo & Bernfeld LLP
11	10-04362	Sage Associates, et al.	McDermott Will & Emery LLP
12	10-04367	Benjamin T. Heller	Chaitman LLP
13	10-04384	Lanx BM Investments, LLC, et al.	FisherBroyles
14	10-04397	Fern C. Palmer Revocable Trust Dtd 12/31/9, et al.	Chaitman LLP
15	10-04400	Sage Realty, et al.	McDermott Will & Emery LLP
16	10-04401	Rose Gindel Trust, et al.	Dentons US LLP
17	10-04415	The Estate of Barbara Berdon, et al.	Dentons US LLP

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1	Adv.Pro. No.	Case Name	Counsel
2	10-04417	The Lustig Family 1990	Binder &
3		Trust, et al.	Schwartz LLP
4	10-04428	Estate of Allen	
5		Meisels, et al.	Chaitman LLP
6	10-04438	Estate of Seymour	
7		Epstein et al.	Chaitman LLP
8	10-04446	Trust Dated 12/6/99 Walter	
9		and Eugenie Kissinger,	
10		et al.	Chaitman LLP
11	10-04468	Ken-Wen Family	Bernfeld DeMatteo
12		Limited Partnership,	& Bernfeld, LLP
13		et al.	Law Office of Mark
14			S. Roher, P.A.
15	10-04469	Carol L. Kamenstein;	
16		individually and in her	
17		capacity as joint tenant	Chaitman LLP
18	10-04486	The Norma Shapiro Revocable	
19		Declaration of Trust Under	
20		Agreement Date	Dentons US LLP
21	10-04489	Marlene Krauss	Chaitman LLP
22	10-04491	Elaine Dine Living Trust	
23		Dated 5/12/06, et al.	Chaitman LLP
24	10-04503	Judd Robbins	Chaitman LLP
25	10-04539	The Gerald and Barbara Keller	
		Family Trust, et al.	Chaitman LLP
	10-04541	Kenneth W. Perlman,	Blank Rome LLP
		et al.	Chaitman LLP
	10-04545	Jerome Goodman, et al.	Chaitman LLP
	10-04554	David Ivan Lustig	Binder & Schwartz
			LLP
	10-04561	Jeffrey R. Werner	Bernfeld, DeMatteo
		11/1/98 Trust, et al.	& Bernfeld, LLP

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1	Adv.Pro. No.	Case Name	Counsel
2	10-04562	Robert F. Ferber	Chaitman LLP
3	10-04570	Jacob M. Dick Rev Living	Chaitman LLP
4		Trust DTD 4/6/01, et al.	Pro Se
5	10-04610	The Whitman Partnership, et al.	Chaitman LLP
6	10-04614	Robert S. Whitman	Chaitman LLP
7	10-04621	Donald A. Benjamin	Chaitman LLP
8	10-04644	Russell L. Dusek	Chaitman LLP
9	10-04648	Peter D. Kamenstein	Chaitman LLP
10	10-04655	Jaffe Family Investment	Law Office of
11		Partnership, et al.	Wayne A. Silver
12	10-04672	Sidney Cole	Dentons US LLP
13	10-04702	S&L Partnership, a New York partnership, et al.	Dentons US LLP
14	10-04709	Andrew M. Goodman	Chaitman LLP
15	10-04718	The Jordan H. Kart Revocable	
16		Trust, et al.	Chaitman LLP
17	10-04728	Estate of Bruno L. Di Giulian, et al.	Chaitman LLP
18	10-04740	Robert Hirsch, as an	
19		individual and as joint	
20		tenant, et al.	Chaitman LLP
21	10-04748	Mark Horowitz	Chaitman LLP
22	10-04749	Philip F. Palmedo	Chaitman LLP
23	10-04752	Kuntzman Family LLC, et al.	Chaitman LLP
24	10-04753	Carla Ginsburg	Chaitman LLP
25	10-04762	James M. Goodman	Chaitman LLP

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	Adv.Pro. No.	Case Name	Counsel
1			
2	10-04768	Plaçon2, William R.	
3		Cohen, et al.	Chaitman LLP
4	10-04806	Kenneth M. Kohl, as an	
5		individual and as a joint	
6		tenant, et al.	Chaitman LLP
7	10-04809	Edyne Gordon NTC	Chaitman LLP
8	10-04818	Toby Harwood	Chaitman LLP
9	10-04823	Frank DiFazio, et al.	Chaitman LLP
10	10-04826	Boyer Palmer	Chaitman LLP
11	10-04837	Leslie Ehrlich f/k/a	
12		Leslie Harwood, et al.	Chaitman LLP
13	10-04861	Harold J. Hein	Dentons US LLP
14	10-04867	Estate of Steven I.	
15		Harnick, et al.	Chaitman LLP
16	10-04878	Lisa Beth Nissenbaum	
17		Trust, et al.	Chaitman LLP
18	10-04882	Laura E. Guggenheimer	
19		Cole	Dentons US LLP
20	10-04889	Estate of Robert Shervyn	
21		Savin, et al.	Chaitman LLP
22	10-04905	Train Klan, a Partnership,	
23		et al.	Chaitman LLP
24	10-04912	Harry Smith Revocable	
25		Living Trust, et al.	Chaitman LLP
26	10-04914	Edyne Gordon	Chaitman LLP
27	10-04920	Glenhaven Limited, et al.	Chaitman LLP
28	10-04921	Stanley T. Miller	Dentons US LLP
29	10-04925	Alvin Gindel Revocable Trust,	
30		a Florida trust, et al.	Dentons US LLP

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1	Adv.Pro. No.	Case Name	Counsel
2	10-04931	Cantor, et al.	Winston & Strawn LLP
3	10-04956	D.M. Castelli	Chaitman LLP
4	10-04961	Sylvan Associates LLC	
5		f/k/a Sylvan Associates Ltd	
6		Partnership, et al.	Chaitman LLP
7	10-04979	James M. New Trust dtd	
8		3/19/01, et al.	Chaitman LLP
9	10-04991	Guiducci Family Limited	
10		Partnership, et al.	Chaitman LLP
11	10-04995	Trust U/Art Fourth O/W/O	
12		Israel Wilenitz, et al.	Chaitman LLP
13	10-05026	Walter Freshman Trust A, Kluger Kaplan	
14		a Florida trust, et al.	Silverman,
15			Katzen & Levine, P.L.
16	10-05037	Barbara L. Savin	Chaitman LLP
17	10-05048	Estate of Armand L.	Law Office of
18		Greenhall, et al.	Joseph F. Keenan
19			Lax & Neville, LLP
20	10-05079	Estate of James M.	
21		Goodman, et al.	Chaitman LLP
22	10-05104	The Gloria Albert Sandler	
23		and Maurice Sandler	
24		Revocable Living Trust	Chaitman LLP
25	10-05118	Charlotte M. Marden	Pryor Cashman LLP
26	10-05124	The Lawrence J. Ryan	
27		and Theresa R. Ryan Revocable	
28		Living Trust, et al.	Chaitman LLP
29	10-05127	Atwood Management Profit	
30		Sharing Plan & Trust,	
31		etc., et al.	Chaitman LLP
32	10-05128	JABA Associates LP,	
33		et al.	Chaitman LLP

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1	Adv.Pro. No.	Case Name	Counsel
2	10-05130	Barbara Kotlikoff Harman	Chaitman LLP
3	10-05133	Boyer H. Palmer,	
4		individually, et al.	Chaitman LLP
5	10-05150	Plafsky Family LLC	
6		Retirement Plan, Robert	
7		Plafsky, et al.	Chaitman LLP
8	10-05151	Palmer Family Trust,	
9		et al.	Chaitman LLP
10	10-05157	The Harnick Brothers	
11		Partnership, et al.	Chaitman LLP
12	10-05168	Bernard Marden Profit	
13		Sharing Plan, et al.	Pryor Cashman LLP
14	10-05184	Laura Ann Smith Revocable	
15		Living Trust, et al.	Chaitman LLP
16	10-05194	Bruce D. Pergament,	
17		et al.	Pryor Cashman LLP
18	10-05196	Whitman 1990 Trust U/A	
19		DTD 4/13/90, et al.	Chaitman LLP
20	10-05209	Lapin Children LLC	Dentons US LLP
21	10-05236	Toby T. Hobish, et al.	Dentons US LLP
22	10-05257	Edward A. Zraick, Jr.,	Hunton
23		individually and as joint	Andrews
24		tenant, et al.	Kurth LLP
25	10-05312	Doron Tavlin Trust	
		U/A 2/4/91, et al.	Chaitman LLP
	10-05377	Richard G. Eaton	Chaitman LLP
	10-05384	Neil Reger Profit	
		Sharing Keogh, et al.	Dentons US LLP
	10-05394	Richard M. Glantz,	Bryan Ha
		et al.	Law Office of
			Richard E. Signorelli

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1	Adv.Pro.	Case Name	Counsel
2	No.		
3	10-05420	Gunther K. Unflat, et al.	Chaitman LLP
4	10-05435	Keith Schaffer, et al.	Chaitman LLP
5	10-05439	Avram J. Goldberg,	
6		individually and in his	Pryor
7		capacity as trust officer	Cashman LLP
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## 1 I N D E X

2 WITNESS PAGE

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4 THEODORE V. CACIOPPI, FBI Special Agent

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## 12 E X H I B I T S

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16 P-2 Undertaking and Consent To Be Bound..11,12

17 P-3 302 Statement, Bates USAVAC0000001  
18 through 018.....11,29

18

19

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21

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1 (Exhibits P-1, P-2 and P-3 marked  
2 for identification.)

3 THE COURT REPORTER: This is the  
4 deposition of Theodore Cacioppi, conducted by  
5 written questions pursuant to Rule 31 of the  
6 Federal Rules of Civil Procedure.

7 This deposition is being conducted  
8 in the adversary proceedings listed on what has  
9 been marked as P Exhibit 1.

10

11 T H E O D O R E V. C A C I O P P I,

12 having been duly sworn,

13 testifies as follows:

14 TRUSTEE'S DIRECT EXAMINATION QUESTIONS:

15 Q. Please state your full name for  
16 the record.

17 A. Theodore Vincent Cacioppi.

18 Q. Do you understand you are here  
19 today in connection with the April 4th, 2019  
20 deposition notice served in connection with 103  
21 separate adversary proceedings marked as P  
22 Exhibit 1?

23 A. Yes.

24 Q. Do you understand that this  
25 deposition is being conducted in connection with

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1 a Litigation Protective Order entered in this  
2 proceeding?

3 A. Yes.

4 Q. Did you sign the Undertaking and  
5 Consent to be Bound to the Litigation Protective  
6 Order marked as P Exhibit 2?

7 A. No.

8 Q. If you did not sign, I understand  
9 you have been provided a copy marked as P  
10 Exhibit 2 which includes the following paragraph  
11 10 to be read into the record:

12 "Confidential Material shall not  
13 be given, shown, made available, or communicated  
14 in any way to any person or entity other than  
15 the following:...f. A witness at any deposition  
16 in the Actions or Rule 2004 examinations." And  
17 the operative section for this deposition is  
18 subparagraph (iv) which reads: "All witnesses  
19 and their counsel shall be provided a copy of  
20 this Order, and shall thereafter be bound by  
21 this Order. Counsel taking the deposition or  
22 Rule 2004 examination shall designate all  
23 portions of the transcript relating to the  
24 Confidential Material as Confidential."

25 Please state the name of your

1 employer and job title.

2 A. I'm a Special Agent with the  
3 Federal Bureau of Investigation.

4 Q. Are you currently employed by the  
5 Federal Bureau of Investigation, which I will  
6 refer to as the "FBI"?

7 A. Yes.

8 Q. Can we agree that we will refer to  
9 the Federal Bureau of Investigation as the  
10 "FBI"?

11 A. Yes.

12 Q. Are you employed as a Special  
13 Agent with the FBI?

14 A. Yes.

15 Q. Do you understand that your  
16 testimony was authorized today by the United  
17 States Attorney for the Southern District of New  
18 York and the FBI?

19 A. Yes.

20 Q. Today I will be asking you about  
21 the following topics that you were authorized to  
22 testify about:

23 i. Your background;

24 ii. Your personal recollection

25 of the December 16, 2008 Proffer Session as it

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1 pertains to statements made by Madoff about when  
2 his fraud began;

3 iii. Your note-taking practices  
4 in general;

5 iv. Your note-taking during the  
6 Proffer Session; and

7 v. Authentication of the 302  
8 Statement.

9 Do you understand that these are  
10 the topics on which you are being deposed?

11 A. Yes.

12 Q. Did you attend undergraduate  
13 college?

14 A. Yes.

15 Q. If so, where did you attend  
16 undergraduate college?

17 A. The University of Vermont.

18 Q. When did you obtain your  
19 undergraduate degree?

20 A. REDACTED

21 Q. What type of undergraduate degree  
22 did you obtain?

23 A. Sociology -- Bachelor's in  
24 sociology with a concentration in criminal  
25 justice.

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1 Q. Do you have a law degree?

2 A. Yes.

3 Q. If so, when did you obtain that  
4 degree?

5 A. REDACTED

6 Q. If so, what law school did you  
7 attend?

8 A. St. John's.

9 Q. Where did you work after you  
10 obtained your law degree?

11 A. A law firm called Rogers & Wells  
12 which became Clifford Chance Rogers & Wells  
13 while I was there.

14 Q. When did you start working for the  
15 FBI?

16 A. Very early 2002.

17 Q. What was your title?

18 A. Special Agent.

19 Q. Is that still your title?

20 A. Yes.

21 Q. What is the role of Special Agents  
22 at the FBI?

23 A. To conduct various types of  
24 investigations on behalf of the Department of  
25 Justice.

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1 Q. What specifically was your role at  
2 the FBI when you began your employment?

3 A. After a very brief tour of certain  
4 specialty squads, which is common for New York,  
5 I was assigned to a white collar squad  
6 specializing in securities and commodities  
7 fraud.

8 Q. Did you take an oath of office  
9 when you joined the FBI?

10 A. Yes.

11 Q. When taking that oath, did you  
12 swear you would bear true and faithful  
13 allegiance to the Constitution of the United  
14 States and faithfully discharge your duties?

15 A. Yes.

16 Q. What training did you receive in  
17 connection with your duties investigating white  
18 collar securities fraud and related crimes?

19 A. Number of classes at the FBI  
20 Academy initially, and as I was on the squad, a  
21 number of conferences and specialty schools I  
22 was sent to and a lot of on-the-job training.

23 Q. How did your role at the FBI  
24 change between 2002 and December 2008?

25 A. I had become the principal relief

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1 supervisor for the squad, which is essentially  
2 second in command.

3 Q. What were your duties as an FBI  
4 Special Agent as of December 2008?

5 A. Investigating securities and  
6 commodities frauds and other similar type of  
7 frauds as were assigned to me.

8 Q. Had you investigated Ponzi scheme  
9 cases on behalf of the FBI prior to December  
10 2008?

11 A. Yes.

12 Q. Had you investigated securities  
13 fraud cases on behalf of the FBI prior to  
14 December 2008?

15 A. Yes.

16 Q. Had you investigated money  
17 laundering cases on behalf of the FBI prior to  
18 December 2008?

19 A. Yes.

20 Q. Was it part of your duties at the  
21 FBI to interview individuals, including  
22 defendants or persons of interest in criminal  
23 investigations?

24 A. Yes.

25 Q. How often did you participate in

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1 these types of interviews of individuals in  
2 fulfilling your obligations to the FBI?

3 A. Hundreds of times.

4 Q. Are you familiar with the term  
5 "proffer"?

6 A. Yes.

7 Q. What is a "proffer" as that noun  
8 is used by the FBI?

9 A. A certain structured type of  
10 interview in which an Assistant U.S. Attorney is  
11 there, the subject's attorney is there and  
12 certain protections are afforded to the subject  
13 of the interview.

14 Q. What is the purpose of a proffer?

15 A. It's an investigative tool.

16 Q. Are you familiar with proffer  
17 agreements?

18 A. Yes.

19 Q. What is a proffer agreement?

20 A. It is essentially a contract that  
21 effectuates the protections afforded to the  
22 subject of the proffer interviewed.

23 Q. Are you familiar with the term  
24 "proffer session"?

25 A. Yes.

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1 Q. Please describe the purpose of a  
2 proffer session.

3 A. It is to interview a subject in a  
4 case in order to gather facts to further the  
5 investigation.

6 Q. Please describe the general  
7 protocol for conducting a proffer session.

8 A. A proffer session is generally  
9 held in a conference room at the U.S. Attorney's  
10 Office. Present are an investigator, generally  
11 the FBI agent, Assistant U.S. Attorney, the  
12 subject and one or more attorneys representing  
13 the subject. The proffer agreement is explained  
14 to the subject and the agreement is executed.

15 Q. Did you participate in proffer  
16 sessions in your capacity as a Special Agent at  
17 the FBI?

18 A. Yes.

19 Q. Approximately how many proffer  
20 sessions have you attended as a Special Agent?

21 A. At least 150.

22 Q. Who typically attends a proffer  
23 session?

24 A. A subject, his attorney or  
25 attorneys, the FBI agent and one or more

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1 Assistant U.S. Attorneys.

2 Q. Who typically asks the questions  
3 at a proffer session?

4 A. Generally the Assistant U.S.  
5 Attorney. Sometimes the agent, though.

6 Q. Is it the FBI's policy and  
7 practice to inform individuals who are the  
8 subject of proffer sessions of the legal  
9 implications of failing to truthfully respond in  
10 full to the questions?

11 A. I don't know if it's the policy.  
12 It's certainly the practice, however.

13 Q. If so, what is that warning?

14 A. Be completely forthcoming and  
15 don't lie. Lying in this context is a crime  
16 unto itself.

17 Q. Do you personally maintain a copy  
18 of the notes you take?

19 A. I don't personally maintain a copy  
20 of the notes. They are maintained in the FBI  
21 files.

22 Q. Did you receive training by the  
23 FBI as to how to conduct interviews, including  
24 proffer sessions?

25 A. Yes.

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1 Q. If so, describe that training.

2 A. Some basic interview training at  
3 the academy and then attending other people's  
4 proffer sessions as an observer and that type of  
5 on-the-job training.

6 Q. Do you comply with FBI training  
7 regarding how to conduct interviews when you are  
8 involved?

9 A. Yes, except that often violated  
10 the five-day rule in turning my notes into a  
11 302. It's sometimes just not possible when  
12 creating a 30- or 40-page 302.

13 Q. Are you familiar with something  
14 called the form FD-302, or "302"?

15 A. Yes.

16 Q. If so, what is an FD-302?

17 A. It's a report of investigative  
18 activity to include the results of an interview.

19 Q. If not, does the FBI require that  
20 a 302 be prepared after every proffer session?

21 A. The FBI requires that a 302 be  
22 prepared after proffer sessions.

23 Q. Who typically prepares the 302?

24 A. The agent attending the proffer  
25 session.

1 Q. How is a 302 prepared?

2 A. The agent takes notes at the  
3 proffer session and uses those notes to refresh  
4 their recollection as they draft a typewritten  
5 302.

6 Q. Does anyone at the FBI review a  
7 302 before it is finalized?

8 A. Yes.

9 Q. If so, who?

10 A. The squad supervisor.

11 Q. Does anyone outside the FBI review  
12 a 302 before it is finalized?

13 A. Sometimes an AUSA. Sometimes an  
14 AUSA, but not often. Assistant U.S. Attorney.

15 Q. If so, who?

16 A. In the cases that it happens, an  
17 Assistant U.S. Attorney.

18 Q. Are 302s maintained in a certain  
19 location within the FBI's files?

20 A. They're maintained in a case file  
21 for that case.

22 Q. If so, where are the 302s  
23 maintained after each is finalized?

24 A. In the case file for that case.

25 Q. Are you familiar with the FBI's

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1 investigation involving Bernard L. Madoff?

2 A. Yes.

3 Q. Do you understand that when I use  
4 the name "Mr. Madoff" I am referring to Bernard  
5 L. Madoff?

6 A. Yes.

7 Q. Do you understand that when I use  
8 the term "BLMIS" I am referring to Mr. Madoff's  
9 business, Bernard L. Madoff Investment  
10 Securities?

11 A. Yes.

12 Q. On what date did the FBI's  
13 investigation of Mr. Madoff begin?

14 A. The day before he was arrested, so  
15 I believe that date was December 10th, of 2008.

16 Q. When did the FBI's investigation  
17 of Mr. Madoff expand to include the business  
18 dealings and operations of BLMIS?

19 A. The same day as the arrest, which  
20 was the 11th.

21 Q. Is that the same date you started  
22 working on the investigation?

23 A. I started working on the  
24 investigation the day before the arrest, the  
25 10th.

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1 Q. Did you take any actions on  
2 December 10, 2008 with respect to the FBI's  
3 investigation of Mr. Madoff and the operations  
4 of BLMIS?

5 A. Yes.

6 Q. If so, what actions did you take  
7 on December 10, 2008 with respect to the FBI's  
8 investigation of Mr. Madoff and the operations  
9 of BLMIS?

10 A. I had a number of phone calls with  
11 my supervisor with one or more Assistant US  
12 Attorneys and with representatives of the SEC,  
13 Securities & Exchange Commission, and I believe  
14 one other civil agency, which may have been the  
15 NASD at that point.

16 Q. Did you take any actions on  
17 December 11, 2008 with respect to the FBI's  
18 investigation of Mr. Madoff and the operations  
19 of BLMIS?

20 A. Yes.

21 Q. Did you visit Mr. Madoff in his  
22 apartment on December 11, 2008?

23 A. Yes.

24 Q. Did you participate in the arrest  
25 of Mr. Madoff in his apartment on December 11,

1 2008?

2 A. Yes; I arrested him.

3 Q. Did you continue to work on the  
4 BLMIS investigation after December 11, 2008??

5 A. Yes.

6 Q. Did there come a time when you  
7 stopped working on the investigation of BLMIS?

8 A. Yes.

9 Q. If so, when did you stop working  
10 on the BLMIS investigation?

11 A. Approximately 18 months after the  
12 arrest.

13 Q. Have you provided any testimony in  
14 a court of law regarding the investigation of  
15 BLMIS?

16 A. Yes.

17 Q. If so, please describe the  
18 circumstances and general overview of any  
19 testimony.

20 A. At a criminal trial of some  
21 co-conspirators I testified as to the  
22 circumstances surrounding the arrest and some  
23 other events that took place that day.

24 Q. Do you recall meeting with Mr.  
25 Madoff any time after his December 11, 2008

1 arrest?

2 A. Yes.

3 Q. Do you recall how many times you  
4 met with Mr. Madoff after December 11, 2008?

5 A. At least twice.

6 Q. When did you meet with Mr. Madoff  
7 after December 11, 2008?

8 A. Approximately one week after the  
9 arrest, after December 11th.

10 Q. Do you recall meeting with Mr.  
11 Madoff in a proffer session?

12 A. Yes.

13 Q. When was the proffer session?

14 A. Approximately one week after the  
15 arrest.

16 Q. Can I refer to this December 2008  
17 meeting with Mr. Madoff as the "December 2008  
18 proffer session"?

19 A. Yes.

20 Q. Did Mr. Madoff sign a proffer  
21 agreement in connection with the December 2008  
22 proffer session?

23 A. Yes.

24 Q. Was Mr. Madoff instructed about  
25 the legal effect of that signature?

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1 A. Yes.

2 Q. What were those instructions?

3 A. Be completely forthcoming and  
4 don't lie.

5 Q. Where did the December 2008  
6 proffer session take place??

7 A. At the U.S. Attorney's Office for  
8 the Southern District of New York.

9 Q. How long did the December 2008  
10 proffer session last?

11 A. At least 3-1/2 to four hours.

12 Q. Was counsel for Mr. Madoff present  
13 at the December 2008 proffer session?

14 A. Yes.

15 Q. Were other participants present at  
16 the December 2008 proffer session?

17 A. Yes.

18 Q. Did you take notes during the  
19 December 2008 proffer session?

20 A. I did.

21 Q. What did you do with the notes  
22 after the December 2008 proffer session?

23 A. I brought them back to the FBI  
24 office, 26 Federal Plaza, and utilized them to  
25 draft a 302.

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1 Q. Did you review the notes with  
2 anyone at the FBI after the December 2008  
3 proffer session?

4 A. No, and nothing else.

5 Q. What was the purpose of  
6 Mr. Madoff's December 2008 proffer session?

7 A. It was very early in the  
8 investigation and we were still trying to gather  
9 facts as to what was going on.

10 Q. Describe generally what occurred  
11 at Mr. Madoff's December 2008 proffer session.

12 A. It was a very well attended  
13 proffer. There were a lot of parties there and  
14 he described for us his version of events as to  
15 the formation and execution of his Ponzi scheme.

16 Q. Who asked Mr. Madoff questions at  
17 the December 2008 proffer session?

18 A. The lead questioner was the  
19 Assistant U.S. Attorney who I believe was Marc  
20 Litt, but many of the government representatives  
21 asked questions at that proffer session.

22 Q. During the December 2008 proffer  
23 session, did you or anyone instruct Mr. Madoff  
24 about the consequences of failing to truthfully  
25 respond in full at his proffer session?

1 A. Yes.

2 Q. If so, who?

3 A. The Assistant U.S. Attorney went  
4 over the proffer agreement with him and  
5 instructed him as to the consequences of lying  
6 in a proffer session.

7 Q. Did Mr. Madoff make any statements  
8 regarding the start of the fraud at BLMIS?

9 A. Yes.

10 Q. If so, what did Mr. Madoff say?

11 A. That it started in the '60s but  
12 began more formally in earnest in the '70s.

13 Q. Did Mr. Madoff state when the  
14 fraud began?

15 A. Yes.

16 Q. If so, when?

17 A. He stated that it began initially  
18 in the '60s but more formally and in earnest in  
19 the '70s.

20 Q. I'm going to show you what has  
21 been marked as P Exhibit 3, Bates stamped  
22 USAVAC0000001 through USAVAC0000014.

23 Do you recognize P Exhibit 3?

24 A. Yes.

25 Q. If so, what is P Exhibit 3?

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1           A.       That's the 302 I drafted for the  
2   proffer we're discussing.

3           Q.       Is P Exhibit 3 the 302 prepared in  
4   connection with Mr. Madoff's December 2008  
5   proffer session?

6           A.       Yes.

7           Q.       Were you involved in the  
8   preparation of the 302?

9           A.       Yes. I drafted it.

10          Q.       Did you prepare the 302?

11          A.       Yes.

12          Q.       Is the 302 a fair and accurate  
13   representation of the information provided by  
14   Mr. Madoff during the December 2008 proffer  
15   session?

16          A.       Yes.

17          Q.       Please look at the bottom of page  
18   ending in -001 of P Exhibit 3. Is the notation  
19   "SA Theodore V. Cacioppi" referencing you?

20          A.       Yes.

21          Q.       Please turn to the page ending in  
22   -001 of P Exhibit 3. Are the participants  
23   listed in the first paragraph consistent with  
24   who you recall participated in the December 2008  
25   proffer session?

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1 A. Yes.

2 Q. On the page ending -001 of P  
3 Exhibit 3, is there a date showing when the  
4 proffer session took place?

5 A. Yes.

6 Q. Is that date consistent with your  
7 recollection of when the proffer session  
8 occurred?

9 A. Yes.

10 Q. On the page ending in -001 of P  
11 Exhibit 3, is there a date showing when the 302  
12 was finalized?

13 A. There's a date showing the  
14 transcription. That doesn't reflect the day of  
15 finalization. That reflects when the drafting  
16 of the 302 began, but I'm sure I finished this  
17 within three days of beginning the  
18 transcription.

19 Q. Is that date consistent with your  
20 recollection of when the 302 was memorialized?

21 A. Yes.

22 Q. Mr. Cacioppi, I am going to ask  
23 you whether Mr. Madoff made certain statements  
24 memorialized in the 302 marked as P Exhibit 3.

25 Please turn to page ending in -007

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1 of P Exhibit 3. The first sentence of the first  
2 full paragraph on that page states: "When  
3 Madoff began a retail business in about 1960 he  
4 had about a dozen clients all of whom were  
5 family and friends."

6 Did Mr. Madoff make this statement  
7 during the proffer session?

8 A. Yes.

9 Q. The second sentence in the first  
10 full paragraph of the page ending in -007 of P  
11 Exhibit 3 states: "The retail business morphed  
12 into a fraud as time went by."

13 Did Mr. Madoff make this statement  
14 during the proffer session?

15 A. Yes.

16 Q. The third sentence in the first  
17 full paragraph on the page ending -007 of P  
18 Exhibit 3 states: "In 1962 Madoff's retail  
19 business was wiped out in the new issue  
20 collapse."

21 Did Mr. Madoff make this statement  
22 during the proffer session?

23 A. Yes.

24 Q. The fourth sentence in the first  
25 full paragraph on the page ending in -007 of P

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1 Exhibit 3 states: "All of his clients lost  
2 virtually their entire investment, which  
3 amounted to a total of about \$30,000."

4 Did Mr. Madoff make this statement  
5 during the proffer session?

6 A. Yes.

7 Q. The fifth sentence in the first  
8 full paragraph on the page ending -007 of P  
9 Exhibit 3 states: "Madoff felt he had to pay  
10 them back, so he borrowed \$30,000 from his  
11 father-in-law to do so."

12 Did Mr. Madoff make this statement  
13 during the proffer session?

14 A. Yes.

15 Q. The sixth sentence in the first  
16 full paragraph on the page ending -007 of P  
17 Exhibit 3 states: "His father-in-law was not  
18 pleased by this development."

19 Did Mr. Madoff make this statement  
20 during the proffer session?

21 A. Yes.

22 Q. The seventh sentence in the first  
23 full paragraph on the page ending -007 of P  
24 Exhibit 3 states: "Madoff was able to pay all  
25 these clients back and start the market making

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1 business."

2 Did Mr. Madoff make this statement  
3 during the proffer session?

4 A. Yes.

5 Q. The eighth sentence in the first  
6 full paragraph on the page ending in -007 of P  
7 Exhibit 3 states: "At about this time he took  
8 in new retail clients."

9 Did Mr. Madoff make this statement  
10 during the proffer session?

11 A. Yes.

12 Q. The ninth sentence in the first  
13 full paragraph on the page ending -007 on P  
14 Exhibit 3 states: "These clients were also  
15 family and friends."

16 Did Mr. Madoff make this statement  
17 during the proffer sentence?

18 A. Yes.

19 Q. The tenth sentence in the first  
20 full paragraph on the page ending -007 of P  
21 Exhibit 3 states: "He began to falsely report  
22 returns of 30 to 40 percent annually to these  
23 customers."

24 Did Mr. Madoff make this statement  
25 during the proffer session?

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1 A. Yes.

2 Q. The eleventh and final sentence in  
3 the first full paragraph on the page ending -007  
4 of P Exhibit 3 states: "All or virtually all of  
5 these accounts were discretionary and Madoff had  
6 power of attorney over them."

7 Did Mr. Madoff make this statement  
8 during the proffer session?

9 A. Yes.

10 Q. Please turn to the page ending in  
11 -004 of P Exhibit 3. The first sentence of the  
12 first full paragraph states: "The books and  
13 records of client business of BLMIS reflect only  
14 the false trades and fund flows pursuant to  
15 these purported trades."

16 Did Mr. Madoff make this statement  
17 during the proffer session?

18 A. Yes.

19 Q. The second sentence of the first  
20 full paragraph on the page ending in -004 of P  
21 Exhibit 3 states: "There is no second set of  
22 books and records."

23 Did Mr. Madoff make this statement  
24 during the proffer session?

25 A. Yes.

1 Q. The third sentence of the first  
2 full paragraph on the page ending in -004 of P  
3 Exhibit 3 states: "The fraud entailed Madoff  
4 taking in funds from investors, holding those  
5 funds and paying them out to investors seeking  
6 redemptions."

7 Did Mr. Madoff make this statement  
8 during the proffer session?

9 A. Yes.

10 Q. The fourth sentence of the first  
11 full paragraph on the page ending in -004 of P  
12 Exhibit 3 states: "It was essentially a Ponzi  
13 scheme."

14 Did Mr. Madoff make this statement  
15 during the proffer session?

16 A. Yes.

17 Q. The fifth sentence of the first  
18 full paragraph on the page ending -004 of P  
19 Exhibit 3 states: "Customers received both  
20 monthly account statements and trade  
21 confirmation (sic) reflecting trades the (sic)  
22 never took place."

23 Did Mr. Madoff make this statement  
24 during the proffer session?

25 A. Yes.

1 Q. The sixth sentence of the first  
2 full paragraph on the page ending -004 of P  
3 Exhibit 3 states: "Madoff began engaging in  
4 fraud in earnest in the 1970s."

5 Did Mr. Madoff make this statement  
6 during the proffer session?

7 A. Yes.

8 Q. The seventh sentence of the first  
9 full paragraph on the page ending in -004 of P  
10 Exhibit 3 states: "The 1980s saw a large  
11 expansion in the retail (i.e. fraudulent)  
12 portion of the business."

13 Did Mr. Madoff make this statement  
14 during the proffer session?

15 A. Yes.

16 Q. The eighth sentence of the first  
17 full paragraph on the page ending in -004 of P  
18 Exhibit 3 states: "As there was no actual  
19 trading, nothing cleared through DTCC or any  
20 clearing firm, and the only records of the  
21 purported trades are the paper confirmations."

22 Did Mr. Madoff make this statement  
23 during the proffer session?

24 A. Yes.

25 Q. Please turn to the page ending in

1 -003 of P Exhibit 3. The first sentence of the  
2 fifth paragraph states: "When Madoff first  
3 began the retail business he did initially  
4 engage in some actual trades."

5 Did Mr. Madoff make this statement  
6 during the proffer session?

7 A. Yes.

8 Q. The second sentence of the fifth  
9 paragraph on the page ending in -003 of P  
10 Exhibit 3 states: "Soon, however, he began to  
11 engage in fraud as to the entire retail  
12 business."

13 Did Mr. Madoff make this statement  
14 during the proffer session?

15 A. Yes.

16 Q. The third sentence of the fifth  
17 paragraph on the page ending in -003 of P  
18 Exhibit 3 states: "He stopped engaging in any  
19 actual trading."

20 Did Mr. Madoff make this statement  
21 during the proffer session?

22 A. Yes.

23 Q. The fourth sentence of the fifth  
24 paragraph on the page ending in -003 of P  
25 Exhibit 3 states: "For virtually the entire

1 life of the retail business Madoff simply did  
2 not trade and sent investors false account  
3 statements and false trade confirmations."

4 Did Mr. Madoff make this statement  
5 during the proffer session?

6 A. Yes.

7 Q. This concludes the Trustee's  
8 direct examination questions.

9 - - -

10 DEFENDANTS' CROSS-EXAMINATION QUESTIONS:

11 Q. Can you name everyone in  
12 attendance at the December proffer session?

13 A. I can, but I'd have to read it  
14 from the 302.

15 At the December proffer session  
16 were Bernard Madoff, his attorneys Daniel  
17 Horowitz, Ira Sorkin and Nicole DeBello. I was  
18 there, Special Agent Keith Kelly was there, an  
19 AUSA named Marc Litt, an AUSA named William  
20 Johnson, Kevin Bell from SIPC, Harvey Kelly from  
21 Alix Partners, Daniel Zinman from RK&O, Tom  
22 Bioli from the SEC, Israel Friedman from the  
23 SEC, Michael Kress from the SEC, Alexander  
24 Vasilescu from the SEC, and George Stamboulidis  
25 from Baker Hostetler, who was the Trustee's

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1 counsel at the time.

2 Q. Was Mr. Madoff's counsel present  
3 at the December proffer session?

4 A. Yes.

5 Q. If so, name his counsel who was  
6 present.

7 A. Ira Sorkin, Nicole DeBello and  
8 Daniel Horowitz.

9 Q. Was a tape recording made of the  
10 interview?

11 A. No.

12 Q. If not, why not?

13 A. They are typically not tape  
14 recorded and policy and law don't provide for  
15 that.

16 Q. Did Mr. Madoff speak of different  
17 kinds of fraudulent activity he conducted?

18 A. Yes.

19 Q. Did he specifically mention his  
20 split strike conversion strategy?

21 A. Yes.

22 Q. Did he explain that he started  
23 that strategy in 1992?

24 A. Yes.

25 Q. Did he explain that, prior to

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1 1992, he had conducted certain trading  
2 activities for his Big Four clients including  
3 Stanley Chais, Carl Shapiro and Norman Levy,  
4 which were not legal?

5 A. I had never heard the term "Big  
6 Four" referring to these clients before and at  
7 the time of the proffer we were not aware  
8 specifically of who various victims were.

9 Q. With respect to the statement on  
10 the eleventh and final sentence of the first  
11 full paragraph on the page ending -007 of P  
12 Exhibit 3, states: "All or virtually all of  
13 these accounts were discretionary and Madoff had  
14 power of attorney over them."

15 What specific customers did Madoff  
16 say had given him a power of attorney?

17 A. I don't recall there being --  
18 customers being specified as to that statement,  
19 but I took it to mean customers that were in  
20 what eventually became the investment advisory  
21 business, which was the fraud.

22 Q. With respect to Mr. Madoff's  
23 statement in the fourth sentence of the first  
24 full paragraph on the page ending in -004 of P  
25 Exhibit 3 that "it was essentially a Ponzi

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1 scheme" to what aspect of BLMIS's activities was  
2 he referring?

3 A. The investment advisory business,  
4 which is what eventually became -- what  
5 eventually morphed into the fraud.

6 Q. With respect to Mr. Madoff's  
7 statement in the sixth sentence of the first  
8 full paragraph on the page ending -004 of P  
9 Exhibit 3 that he "began engaging in fraud in  
10 earnest" in the 1970s, isn't it true that  
11 Mr. Madoff was referring to his activities for  
12 his Big Four clients including Carl Shapiro,  
13 Stanley Chais and Norman Levy?

14 A. Again, I never heard of the term  
15 "Big Four" referring to certain victims. And as  
16 to those specific victims, we were still trying  
17 to sort out at that time who were victims and  
18 who weren't. Although I believe -- I took him  
19 to mean that he was talking about what  
20 eventually became the investment advisory  
21 business, i.e. the fraud.

22 Q. Both Madoff and DiPascali pled  
23 guilty in open court, obviously in the presence  
24 of the government, to a fraud of the investment  
25 advisory customers that began in 1992 with the

1 split strike conversion strategy.

2 Why did the government allow both  
3 defendants to plead to the fraud beginning in  
4 1992 if the government believed the fraud began  
5 decades earlier?

6 MR. CHAUDHURY: The government  
7 objects to this question as beyond the scope of  
8 the Touhy Authorization and directs the witness  
9 not to answer.

10 Q. When the government presents a  
11 witness to the Court who is pleading guilty,  
12 does the government review the guilty plea  
13 before it is presented?

14 MR. CHAUDHURY: The government  
15 objects to this question as beyond the scope of  
16 the Touhy Authorization and directs the witness  
17 not to answer.

18 Q. Does the government allow a  
19 criminal defendant to make false statements in  
20 his guilty plea?

21 MR. CHAUDHURY: The government  
22 objects to the question as beyond the scope of  
23 the Touhy Authorization and directs the witness  
24 not to answer.

25 Q. Would the government refuse to

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1 allow a criminal defendant to make a false  
2 statement in his guilty plea?

3 MR. CHAUDHURY: The government  
4 objects to the question as beyond the scope of  
5 the Touhy request and directs the witness not to  
6 answer.

7 Q. At the time Madoff and Frank  
8 DiPascali made their criminal guilty pleas, had  
9 the government had time to fully investigate the  
10 Madoff/BLMIS fraud to be satisfied that the  
11 guilty pleas of Madoff and DiPascali were  
12 accurate?

13 MR. CHAUDHURY: The government  
14 objects to the question as beyond the scope of  
15 the Touhy Authorization and directs the witness  
16 not to answer.

17 Q. If the answer to this question is  
18 no, did the government disclose to the Court  
19 when these defendants pled guilty that the  
20 government had not determined if the guilty  
21 pleas were accurate?

22 MR. CHAUDHURY: The government  
23 objects to the question as beyond the scope of  
24 the Touhy Authorization and directs the witness  
25 not to answer.

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1 This concludes the Defendants'  
2 cross-examination questions.

3 Thank you.

4 (Deposition concluded 10:30 a.m.)

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1 ERRATA SHEET

2

WITNESS NAME: THEODORE V. CACIOPPI

3

PAGE/LINE

CHANGE

REASON

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1 JURAT

2 I, THEODORE V. CACIOPPI, have read  
3 the foregoing deposition and hereby affix my  
4 signature that same is true and correct, except  
5 as noted above.

6 THEODORE V. CACIOPPI

7 THE STATE OF \_\_\_\_\_

8 COUNTY OF \_\_\_\_\_

9  
10 Before me, \_\_\_\_\_, on this  
11 day personally appeared \_\_\_\_\_,  
12 known to me (or proved to me on the oath of or  
13 through \_\_\_\_\_ (description of identity  
14 card or other document) to be the person whose  
15 name is subscribed to the foregoing instrument  
16 and acknowledged to me that he/she executed the  
17 same for the purpose and consideration therein  
18 expressed.

19 Given under my hand and seal of office on  
20 this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
21

22 NOTARY PUBLIC IN AND FOR  
23 THE STATE OF \_\_\_\_\_  
24

25 My Commission Expires: \_\_\_\_\_.

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## 1 REPORTER'S CERTIFICATION

2  
3 I, NANCY C. BENDISH, Certified  
4 Court Reporter and Notary Public of the States  
5 of New York and New Jersey, do hereby certify  
6 that, prior to the commencement of the  
7 aforementioned examination, THEODORE V. CACIOPPI  
8 was sworn by me to testify the truth, the whole  
9 truth and nothing but the truth.

10 I DO FURTHER CERTIFY that the  
11 foregoing is a true and accurate transcript of  
12 the testimony as taken stenographically by and  
13 before me at the time, place, and on the date  
14 hereinbefore set forth.

15 I DO FURTHER CERTIFY that I am  
16 neither a relative nor employee nor attorney nor  
17 counsel of any party in this action and that I  
18 am neither a relative nor employee of such  
19 attorney or counsel, and that I am not  
20 financially interested in the event nor outcome  
21 of this action.



22  
23 NANCY C. BENDISH, CCR, RMR, CRR  
24 Realtime Systems Administrator  
Certificate No. XI00836

25 Dated: May 18, 2019

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